

**Addendum #1 to the Delaware Department of Justice
Request for Proposals for Special Legal Counsel
RFP No. 051019DOJ**

May 31, 2019

This addendum is in response to questions posed by interested firms:

Firm #1

Question: I'm writing to seek clarification on the specific type of hazardous substances at issue in this RFP. I see that the State of Delaware has been impacted by PFC contamination, so I'm assuming it's those chemicals. Can you confirm whether it's PFCs or, if not, what chemicals are at issue?

Answer: It relates to groundwater contamination from agricultural point sources and pollutants common to such agricultural concerns.

Firm #2

Question: I have a question on the RFP for the Special counsel for Environmental matters. Section 1.01 states that "Current representation of an entity that is the defendant in a lawsuit alleging environmental violations will present an insurmountable conflict." Section 3.02 C addresses how conflicts will be handled. Can you further explain the insurmountable conflict issue.

For instance, if a firm represents Company A, a defendant in an environmental matter, but Company A is not a defendant in any matter that is or will be the subject of the RFP, is that considered an insurmountable conflict? Is the same true for instance, if Company A has no connection to Delaware and no facilities here? Or is it an absolute rule that if a firm represents any defendant in a case involving environmental allegations that the Department believes it is an insurmountable conflict?

Answer: In order to assess the specific effect of a potential conflict and the State's ability to waive conflicts, proposing parties should describe

any potential conflicts of interest with particularity in their proposal. Generally speaking, a matter which has no connection to Delaware is unlikely to result in an insurmountable conflict.

Firm #3

Question: Please describe the nature of the contamination, including the alleged contaminant and the source of the contamination.

Answer: It relates to groundwater contamination from agricultural point sources and pollutants common to such agricultural concerns.

Question: What is the location of the contamination?

Answer: While further investigation is required to provide an accurate answer to this question, it is within the State of Delaware. It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Question: What is the timeframe in which the contamination occurred?

Answer: Further investigation is required to provide an accurate answer to this question. It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Question: What are the alleged or potential damages which the State would seek to recover in any lawsuit?

Answer: Further investigation is required to provide an accurate answer to this question. It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Question: Is this contamination associated with property loss or personal injury for which the state would seek to recover damages?

Answer: Both associations are possible. Further investigation is required to provide an accurate answer to this question. It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Question: Would the State seek to obtain funds for remediation and/or injunctive relief?

Answer: Yes, so long as such relief is legally and factually supported.

Question: Who are the anticipated defendants?

Answer: Further investigation is required to provide an accurate answer to this question. It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Firm #4

Question: Which industry or industries will be subject to investigations and enforcement actions contemplated in the scope of the RFP?

Answer: This matter involves an investigation into groundwater contamination from agricultural point sources and involves pollutants common to such agricultural concerns.

Question: Are there investigations currently under way, or contemplated, which will be assigned to the selected firm for enforcement action?

Answer: An investigation is under way presently and this matter will be assigned to the selected firm for further investigation and possible enforcement action should the law and facts support such action.

Question: Can the State identify specific entities that are or may be subject to investigation? (This will assist conducting effective conflict checks.)

Answer: The selected firm will be provided the factual information necessary to run appropriate conflicts checks immediately following selection and prior to executing an engagement agreement.

Question: Will the Special Legal Counsel be responsible for designing, initiating, managing and solely financing the investigations necessary to determine whether there are potential violations requiring enforcement action?

Answer: It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State. The Department of Justice will maintain final authority over all activities of the selected firm. While it is a condition of this proposal that all costs shall be borne by the selected firm, proposing parties are free to suggest alternate methods to finance the costs associated with this matter.

Question: Will the Special Legal Counsel be responsible for identifying the subjects of investigation and potential enforcement action?

Answer: It is expected that the selected firm will apply its expertise to assist in properly investigating these concerns once it has cleared conflicts and is fully engaged with the State.

Question: Will the Special Legal Counsel be provided with the authority to initiate enforcement actions?

Answer: Yes, so long as such action is legally and factually supported, subject to the final authority of the Department of Justice to approve all activities of the selected firm.

Question: Will the State provide funding and other resources for any aspect or portion of an investigation?

Answer: While it is a condition of this proposal that all costs shall be borne by the selected firm, proposing parties are free to suggest alternate methods to finance the costs associated with this matter.

Question: Will the Special Legal Counsel have access to the State's investigatory resources, including permitting and monitoring data, applications and self-monitoring reports, prior enforcement records, and responsible officials / State employees?

Answer: The selected firm will have access to all resources and information available to the State of Delaware Department of Justice's Fraud and Consumer Protection Division.

Question: How will the Special Legal Counsel recover its costs and fees if the State decides not to initiate an enforcement action, but the Special Legal Counsel has expended time and resources on an investigation or other pre-litigation steps?

Answer: While it is a condition of this proposal that all costs shall be borne by the selected firm, proposing parties are free to suggest alternate methods to finance the costs associated with this matter, including cost recovery options in the event of aborted proceedings.

Question: How will the selected firm recover its costs and fees if the State decides to settle or terminate an enforcement action?

Answer: Any approved settlement will include payment of attorney fees and costs, payable to the selected firm. With respect to aborted proceedings, please see the immediately preceding answer. Proposing parties are free to suggest cost and fee recovery mechanisms in the event of settlement, success at trial, or other form of case resolution. To the extent that the law and facts permit it, the selected firm may receive fees and costs awarded by the relevant court.

Question: How much authority will the Special Legal Counsel be granted to determine whether to settle an enforcement action and the terms of such settlement?

Answer: The Department of Justice shall retain sole authority to approve any settlement, including its terms.

Question: Will the State consider proposals for a fee base for the investigatory phase, and a contingency fee for the litigation phase?

Answer: Yes. While it is a condition of this proposal that all costs shall be borne by the selected firm, proposing parties are free to suggest alternate methods to finance the costs associated with this matter.

Question: Has the target(s) of the investigation(s) been deemed a chronic violator pursuant to 7 *Del. C.* § 7904?

Answer: The selected firm will have access to all resources and information available to the State of Delaware Department of Justice's Fraud and Consumer Protection Division.

Question: Have administrative penalties been imposed upon the parties to be investigated pursuant to 7 *Del. C.* § 6005? If so, what are the penalty amounts?

Answer: The selected firm will have access to all resources and information available to the State of Delaware Department of Justice's Fraud and Consumer Protection Division.

Question: Has the EPA been involved, or has the EPA imposed fines or penalties on the parties to be investigated pursuant to the Federal Resource Conservation and Recovery Act for the Delaware-related matters at issue?

Answer: The selected firm will have access to all resources and information available to the State of Delaware Department of Justice's Fraud and Consumer Protection Division.

Question: Have Federal agencies been involved, or has any Federal agency imposed fines or penalties on the parties to be investigated pursuant to the Clean Water Act for the Delaware related-matters at issue?

Answer: The selected firm will have access to all resources and information available to the State of Delaware Department of Justice's Fraud and Consumer Protection Division.

Question: After selection, but prior to a contract award, will there be an opportunity for the selected firm or firms to negotiate specific details of the engagement once the details of the engagement are known to the selected firm?

Answer: Yes.

Question: Should the State reach a settlement that requires the parties investigated to pay for specific remediation, would the value of the remediation be included as a component of the contingency payment to the selected firm?

Answer: Yes, so long as such value could be reasonably ascertained, in such event the State would seek to include such a payment in the settlement agreement's terms.

Question: Would the State consider proposals for a blended contingency fee?

Answer: Yes.